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Stamped for the Record

May 17, 2012

The Honorable Kevin Brady
Chairman
Subcommittee on Trade
Committee on Ways and Means
Washington, DC 20515

The Honorable Jim McDermott
Ranking Member
Subcommittee on Trade
Committee on Ways and Means
Washington, DC 20515

Dear Chairman Brady and Ranking Member McDermott:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit written testimony to the subcommittee regarding customs trade modernization, facilitation and enforcement. RILA strongly supports the push by U.S. Customs and Border Protection (CBP) to reform and modernize its processes and dismantle antiquated systems, and commends the hard work and leadership of Acting Commissioner David Aguilar and Former Commissioner Alan Bersin. We are encouraged by CBP's continued aggressive outreach and reengineered trade processes, and look forward to customs reauthorization legislation that will ensure CBP has the resources to continue its progress. As the committee considers important issues to include in customs legislation, RILA urges consideration of four issues: authorization for full funding of the Automated Commercial Environment, Centers of Excellence and Expertise, simplified entry, and a provision to advance prospective assessments of antidumping and countervailing duties.

RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Modernization of Automated Commercial Environment and International Trade Data System is Crucial and Should Be Fully Funded

The modernization of CBP's Automated Commercial Environment (ACE) and International Trade Data System (ITDS) is critical to promote the efficient processing of trade in light of increased import volume. Full funding is essential for completing ACE, ITDS and the full adoption of a "single window" for import processing. These efforts will assist other government

agencies (OGAs) in identifying, documenting, and executing their plan to leverage ACE to improve business operations and further agency missions.

Recent CBP Initiatives Offer a Significant Opportunity to Streamline the Flow of Trade

Centers of Excellence and Expertise

The Centers of Excellence and Expertise (CEEs) initiative represents a significant opportunity to facilitate trade, manage risk, and increase efficiency, in particular for large importers who operate across multiple ports. Retailers see significant benefits in this initiative, particularly if other government agencies are involved. Retailers' diverse product range means that retailers' imports are regulated by a variety of other government agencies, including the Food and Drug Administration, Consumer Product Safety Commission, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, and Environmental Protection Agency. Given the breadth of consumer products, it is likely that the CEE would need to communicate regularly with OGAs to address the full range of OGA requirements facing a mass retailer, and OGA engagement with the CEE will be critical.

A shift to management by account will likely require significant changes within CBP, but will have benefits in both trade facilitation and risk segmentation. CEEs will bring consistency, uniformity, and predictability to the import process, which will translate to time and money saved for retailers and other importers of all sizes.

Simplified Entry

Retailers are also very interested in the development of a simplified entry program and its potential for allowing improved targeting, streamlined and expedited filing, and transaction savings. The simplified entry pilot has been helpful in answering many questions about the program, and we appreciate and commend CBP's hard work in acting quickly to implement this groundbreaking program.

Because the simplified entry initiative holds such great promise, we urge CBP to open the program to additional participants and additional modes. The value of simplified entry for retailers lies mostly in the ocean mode, and we are very interested in seeing the pilot extended to include this form of transportation. Simplified entry has tremendous potential to streamline retail supply chains, and it is therefore very important that the program continue to receive appropriate resources and that CBP continue to test simplified entry as quickly as is reasonably possible.

Non-Resident Importers Currently Unable to Take Advantage of These Opportunities

Some of RILA's members are headquartered outside of the United States and are considered non-resident importers. They also have a substantial presence in the United States, import a large volume of goods into the United States, and employ thousands of U.S. workers. As non-resident importers, these companies are currently ineligible for Customs-Trade Partnership Against Terrorism (C-TPAT), Importer Self-Assessment (ISA), and other initiatives mentioned above, such as simplified entry and Centers for Excellence and Expertise.

We hope that CBP changes this requirement or creates a new definition of a non-resident importer so that importers that have a substantial presence in the United States are given the option to participate in these important programs.

Congress Should Adopt a Prospective System to Assess Antidumping and Countervailing Duties

RILA recognizes the importance of provisions to combat unfair trade practices. At the same time, predictable and reliable global sourcing is fundamental to maintaining American economic competitiveness, and U.S. trade remedy laws should be updated to reflect this modern reality. Specifically, RILA believes that Congress should codify the recommendation made by the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) and the Government Accountability Office to implement a prospective system to assess U.S. antidumping and countervailing (AD/CV) duties. RILA believes that a prospective system would improve duty collections and enforcement, reduce administrative burdens, decrease supply chain uncertainty, and enhance American competitiveness.

Because the Department of Commerce does not determine final AD/CV liability until years after goods enter the United States, CBP is required to maintain a separate and unique duty collection system for AD/CV duties and must routinely collect those duties long after the goods have entered the country. CBP leadership has repeatedly commented that the retrospective collection of AD/CV duties is fundamentally flawed and undermines enforcement and collection efforts.

In December 2011, the COAC formally recommended that the United States adopt a prospective system to assess antidumping and countervailing duties. COAC recommended that CBP work with the U.S. Department of Treasury and the Department of Commerce to jointly design a prospective AD/CV duty assessment and collection system, and that the agencies consult with the appropriate Congressional committees of jurisdiction so that the legislation could be drafted to implement this system.

U.S. companies are willing to pay fairly traded prices, but they need to know what they are so that they can make informed businesses decisions. Under a “prospective normal value” system, Commerce would determine a fair trade price (i.e. “normal value”) and CBP would apply those results prospectively on a transaction-by-transaction basis. Thus, if subject merchandise were imported at a price below the normal value (i.e. at a “dumped price”), CBP would, at the time of import, immediately collect final AD duties equal to the amount of the price difference (the dumping margin). Zero duties would be assessed on non-dumped imports. The same system would apply for calculating and assessing CV duties.

Under such a system, therefore, injurious dumping or subsidization would be remedied immediately upon importation, and U.S. companies would know in advance what the actual fairly traded cost associated with each potential source is to make informed decisions regarding competitive strategies and sourcing.

Conclusion

RILA believes that CBP has made significant progress toward modernization under Commissioners Bersin and Aguilar. Recent initiatives such as the drive toward full implementation of the Automated Commercial Environment, the Centers for Excellence and Expertise and Simplified Entry have vast potential to facilitate trade, and it is essential that CBP continues to have the resources to develop these and other game changing programs. RILA also believes that Congress should codify repeated recommendations by COAC and GAO to switch to a prospective system to assess antidumping and countervailing duties.

Thank you for the opportunity to offer these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Lester", with a horizontal line extending from the end.

Stephanie Lester
Vice President, International Trade